

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION**

GARY BRISTOL,

Plaintiff,

vs.

TRAVIS HETTICK,

Defendant.

**CV 21-00072-BU-BMM-JTJ**

**ORDER**

United States Magistrate Judge John Johnston entered his Findings and Recommendations in this case on August 17, 2022. (Doc. 29.) Judge Johnston made the following recommendations: that Bristol's case (Doc. 12) should be DISMISSED under Fed. R. Civ. P. 41(b) for failure to prosecute; that the Clerk of Court should be directed to close this matter and enter a judgment pursuant to Fed. R. Civ. P. 58; that the Clerk of Court should be directed to have the docket reflect that the Court certifies pursuant to Fed. R. App. 24(a)(3)(A) that any appeal of this decision would not be taken in good faith.

Neither party filed objections to the Findings and Recommendations. The parties have waived the right to de novo review thereof. 28 U.S.C. § 636(b)(1)(C). Absent objection, this Court reviews findings and recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313

(9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Judge Johnston applied the five-factor test in *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988) (quoting *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir.1986)), to determine that Bristol’s failure to prosecute warrants dismissal of his case. (Doc. 29 at 1–2.) Bristol has failed to file his response to Hettick’s Motion for Summary Judgment (Doc. 24) within the requisite timeframe or otherwise move this litigation forward. (Doc. 29 at 2.) The Court finds no error in Judge Johnston’s Findings and Recommendations and adopts them in full.

Accordingly, **IT IS ORDERED:**

1. Mr. Bristol’s Amended Complaint (Doc. 12) is **DISMISSED** under Fed. R. Civ. P. 41(b) for failure to prosecute.
2. The Clerk of Court is directed to a judgment of dismissal by separate document.
3. The Court certifies any appeal would not be taken in good faith.

DATED this 3rd day of October, 2022.



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Brian Morris, Chief District Judge  
United States District Court